

RECORDATION NO. 9762 Filed 1425

OCT 13 1978 -2 10 PM

INTERSTATE COMMERCE COMMISSION
BraeLease Corporation
Three Embarcadero Center
San Francisco, California

RECORDATION NO. 9763 Filed 1425

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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9764 Filed 1425

OCT 13 1978 -2 10 PM

INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
Washington, D. C. 20423

RECORDATION NO. 9764 Filed 1425

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INTERSTATE COMMERCE COMMISSION

October 12, 1978

RECORDATION NO. 9763 Filed 1425

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INTERSTATE COMMERCE COMMISSION

Dear Sir:

9765

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INTERSTATE COMMERCE COMMISSION

Enclosed for filing and recording pursuant to
Section 20c of the Interstate Commerce Act are the
following documents relating to the railroad equipment
described and marked in accordance with Schedule I
attached hereto:

9765

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INTERSTATE COMMERCE COMMISSION

(1) Equipment Lease Agreement dated October 1, 1978 between Birmingham Trust National Bank, as Owner Trustee and BraeLease Corporation (hereinafter called BraeLease Lease).

(2) Lease Agreement dated as of February 28, 1978 between BRAE Corporation and Willis B. Kyle Inc. (hereinafter called Kyle Lease) (including Riders No. 1, 2 and 3 and Equipment Schedule No. 1), Amendment No. 1 thereto dated as of March 31, 1978 and Amendment No. 2 thereto dated as of April 15, 1978.*

(3) Sublease Agreement dated as of March 28, 1978 between Willis B. Kyle Inc. and Yreka Western Railroad Company (hereinafter called Yreka Sublease) (including Riders No. 1, 2 and 3 and Equipment Schedule No. 1) and an Assignment of the Sublease Agreement dated as of October 11, 1978 to BraeLease Corporation.*

(4) Purchase Agreement dated as of September 30, 1978 between FMC Corporation and BraeLease Corporation (hereinafter called Purchase Agreement), an Assignment of the Purchase Agreement dated as of October 1, 1978 to Birmingham Trust National Bank, as Owner Trustee, and a Consent to the Assignment dated as of October 1, 1978 by FMC Corporation.

*and an assignment of said agreement dated as of October 11, 1978, to Birmingham Trust National Bank, as Owner Trustee.

No.

OCT 13 1978

Date
Fee \$240.00

ICC Washington, D. C.

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INTERSTATE COMMERCE COMMISSION

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I.C.C.
FEE OPERATION BR.

The names and addresses of the parties to the above transactions are as follows:

(1) BraeLease Lease

(a) Lessor: Birmingham Trust National
Bank, as Owner Trustee
P. O. Box 2554
Birmingham, Alabama 35290

(b) Lessee: BraeLease Corporation
Three Embarcadero Center
San Francisco, California
94111

(2) Kyle Lease

(a) Lessor: BraeLease Corporation
Three Embarcadero Center
San Francisco, California
94111

(b) Lessee: Willis B. Kyle Inc.
1350 "O" Street, Suite 301
Fresno, California 93721

(3) Yreka Sublease

(a) Lessor-
Assignor: Willis B. Kyle Inc.
1350 "O" Street, Suite 301
Fresno, California 93721

(b) Lessee: Yreka Western Railroad Company
300 East Minor Street
Yreka, California 96097

(c) Assignee: BraeLease Corporation
Three Embarcadero Center
San Francisco, California 94111

(4) Purchase Agreement

(a) Manufacturer: FMC Corporation
Box 3616
4700 Northwest Front Avenue
Portland, Oregon 97208

(b) Vendee-
Assignor: BraeLease Corporation
Three Embarcadero Center
San Francisco, California 94111

(c) Assignee: Birmingham Trust National Bank,
as Owner Trustee.
P. O. Box 2554
Birmingham, Alabama 35290

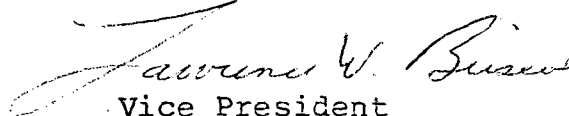
BRAE Corporation, the corporation which originally executed the Kyle Lease was merged into its wholly-owned subsidiary, BraeLease Corporation, on September 27, 1978. Pursuant to such merger, BraeLease Corporation assumed all of the rights and obligations of BRAE Corporation. Accordingly, BraeLease Corporation is now party to the Kyle Lease.

Also enclosed is our check payable to the order of the Interstate Commerce Commission in the amount of \$200, the prescribed fee for filing and recording the enclosed documents.

Please file and record the enclosed documents and cross-index them under the names of, in the case of the BraeLease Lease, the Lessor and the Lessee, in the case of the Kyle Lease, the Lessee and the Lessor (both BraeLease Corporation and its predecessor, BRAE Corporation), in the case of the Yreka Sublease, the Lessor-Assignor, the Lessee and the Assignee,* and in the case of the Purchase Agreement, the Manufacturer, the Vendee-Assignor and the Assignee.

Return to the person presenting this letter, together with your letter confirming such filing and recordation and your fee receipt therefor, all counterparts of the enclosed documents not required for filing.

Very truly yours,


Vice President

The Kyle Lease and the Yreka Sublease should also be cross-indexed under the name of Birmingham Trust National Bank, as Owner-Trustee, as Assignee.

SCHEDULE I

<u>Quantity</u>	<u>Type</u>	<u>Identifying Numbers (Both Inclusive)</u>	<u>Markings</u>
100	70-ton 50 '6" Box Cars, AAR Class XM	YW25101-YW25200	"Property of and leased from Birmingham Trust National Bank, as trustee, subject to an agreement filed under the Interstate Commerce Act, Section 20c"

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INTERSTATE COMMERCE COMMISSION

This PURCHASE AGREEMENT, dated as of September 30, 1978, by and between FMC Corporation, a Delaware corporation (hereinafter called the "Manufacturer"), and BraeLease Corporation, a Delaware corporation, (hereinafter called "Vendee").

W I T N E S S E T H

The Manufacturer and the Vendee have heretofore entered into the Purchase Order (hereinafter called the "Purchase Order") referred to in Section 1, of Schedule A, hereto attached (hereinafter called "Schedule A") whereunder the Manufacturer has agreed to construct and deliver to the Vendee at the delivery point specified in Section 2, of Schedule A and the Vendee has agreed to accept and pay for the Railroad Equipment (hereinafter individually called a Car and collectively called the "Cars") described in Section 3, of Schedule A; and

Inasmuch as the Vendee does not wish to pay for the Cars prior to shipment of the Cars from the Manufacturer's plant, the Vendee (in order that it may use the Cars during the time between shipment from the Manufacturer's plant and payment of the purchase price 10 business days after delivery, acceptance and invoicing for all of the Cars) has requested the Manufacturer to give the Vendee title and possession to the Cars on completion, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the premises and of the promises of the parties herein contained, the parties agree as follows:

1. The Manufacturer agrees to deliver the Cars to the Vendee and the Vendee agrees to accept the Cars from the Manufacturer at the delivery point above referred to. When the purchase price of all of the Cars has been paid, this Agreement shall automatically be terminated and the Manufacturer's purchase money security interest shall automatically terminate without further action by or notice to any party concerned. On delivery of each Car to the Vendee, the Vendee will assume the responsibility and risk of loss with respect to such Car.

2. After the Vendee's representative finds that each Car upon completion has been built in accordance with the requirements of the Purchase Order, he will execute and deliver to the Manufacturer a certificate of acceptance acknowledging the receipt of delivery of such Car under this Agreement. Title to each Car shall pass to the Vendee upon the receipt by the Manufacturer of such a certificate of acceptance with

respect thereto; provided, however, that the Manufacturer shall retain a purchase money security interest in each Car until it has received payment in full therefor. At such time, the Manufacturer shall execute and deliver to the Vendee, a bill of sale, confirming the earlier transfer of title, for the Cars as is, where is, and without warranty of any kind except only that the Cars are free from all liens and encumbrances created by the Manufacturer. Neither the inspection nor any examination nor the acceptance of any Car shall be deemed a waiver or a modification by the Vendee of any of its rights against the Manufacturer under any warranties contained in the Purchase Order. The Vendee, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, the Vendee shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's security interest in the Cars.

3. The Vendee agrees that it will permit no liens of any kind to attach to the Cars (other than any rights of its lessee under the Vendee's lease with such lessee); and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges, and penalties

that may accrue or be assessed or imposed upon the Cars or the Manufacturer because of the ownership, use, marking, operation, management or handling of the Cars by the Vendee during the term of this Agreement. The Vendee's obligations contained in this paragraph shall survive the termination of this Agreement by mutual agreement or otherwise.

4. The Vendee will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement, if not theretofore paid.

5. Prior to the delivery of each Car to the Vendee, such Car will be numbered with a car number as set forth in Section 3, of Schedule A, and there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by the Vendee upon each side of each Car in letters not less than one inch in height the words set forth in Section 5, of Schedule A.

6. The Vendee agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to the Vendee of the Cars, as contemplated by this Agreement, shall not relieve the Vendee of its obligations to accept, take, and pay for the Cars in accordance with the terms of the Purchase Order, or impair any of the Manufacturer's rights under the Purchase Order, which is by reference made a part of this Agreement as fully as though expressly set forth herein.

7. The Manufacturer shall be entitled to all the rights of a secured party under the Uniform Commercial Code of California and Section 20c of the Interstate Commerce Act as in effect at any time during which it retains a security interest in the Cars hereunder.

[Corporate Seal]

ATTEST:

BRAELEASE CORPORATION

Michael T. Everett
Assistant Secretary

By:

Title:

FMC CORPORATION
MARINE & RAIL EQUIPMENT DIVISION

By:

Title:

SCHEDULE A

SECTION 1. Purchase Order

Vendee's letter of March 31, 1978, Manufacturer's letters of April 26, 1978 and October 11, 1978. LOT NO. 17941.

SECTION 2. Delivery Point

Manufacturer's Plant.

SECTION 3. Railroad Equipment

✓ 100 70 Ton 50'6" Box Cars - YW 25101-25200 (AAR Designation XM)

SECTION 4. Purchase Price

The price will not exceed \$37,000 per unit nor \$3,700,000, ex factory, for all of the equipment.

SECTION 5. Markings on Cars

Stencil in letters at least one inch in height:

"Property of and leased from Birmingham Trust National Bank, as Trustee, subject to an Agreement Filed under the Interstate Commerce Act, Section 20c."

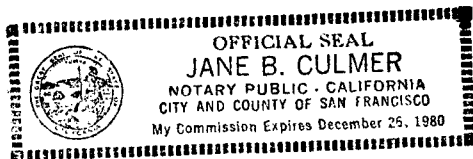
STATE OF CALIFORNIA

)

) SS

CITY AND COUNTY OF SAN FRANCISCO)

On this 11th day of October 1978, before me personally appeared William K Galkraith, to me personally known, who, being by me duly sworn, says that he is an authorized representative of FMC Corporation, that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Jane B Culmer
Notary Public

Notarial Seal

My Commission expires: December 26, 1980

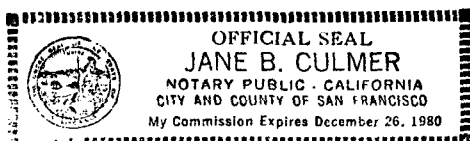
STATE OF CALIFORNIA

)

) SS

CITY AND COUNTY OF SAN FRANCISCO)

On this 11th day of October 1978, before me personally appeared Lawrence W. Briscoe, to me personally known, who, being by me duly sworn, says that he is a Vice President of BraeLease Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Jane B Culmer
Notary Public

Notarial Seal

My Commission expires: December 26, 1980